

Exhibit 40

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**(U) Department Of State Recommendation Regarding
Temporary Protected Status (TPS) for Nicaragua
November 19, 2024**

I. (U) Statutory Basis for Designation

(U) Have the conditions under which the foreign state was designated for Temporary Protected Status ceased to exist?

(U) No.

A. (U) Armed conflict

1. Is the foreign state involved in an ongoing, internal, armed conflict?

(U) No

2. If so, would the return of nationals of the foreign state to that state (or to the part of the state) pose a serious threat to their personal safety?

(U) N/A

B. (U) Environmental Disaster

1. (U) Does there continue to be a substantial, but temporary, disruption of living conditions in the foreign state affected by an earthquake, flood, drought, epidemic, or other environmental disaster?

(U) The regions most devastated by Hurricane Mitch – the mountainous north and isolated Caribbean coast – remain the poorest and least developed in the country. Subsequent environmental events including frequent hurricanes significantly

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compounded the initial devastation and disruption of living conditions caused by Hurricane Mitch. Hurricane Julia in October 2022, Hurricane Nate in 2017, Tropical Storm Otto in 2016, Tropical Storm Matthew in 2010, Hurricane Ida in 2009, and Tropical Storm Alma and Tropical Depression 16 in 2008 all significantly affected Nicaragua's infrastructure and ability to recover fully from the devastation caused in 1999. Ida destroyed around 80 percent of the schools and houses in the Caribbean coast of Nicaragua, affecting the lives of around 6,000 people. Alma, for example, caused over 160,000 evacuations from homes and left more than 25,000 people homeless. These environmental events have hampered recovery from and exacerbated the damage caused by Hurricane Mitch.

(U) In 2020, Hurricanes Iota and Eta hit Nicaragua barely two weeks apart and within landfall of 15 miles of each other, followed in 2022 by Hurricane Julia, which caused an estimated \$400 million in damages. These more-recent hurricanes caused significant damage to many of the same areas devastated by Mitch, triggering landslides that displaced thousands of people and caused dozens of fatalities. Hurricane Julia caused damage to more than 8,000 homes and left more than one million people without power and more than 200,000 without access to drinking water; the South Caribbean Coast Autonomous Region was hardest hit, the same region previously devastated by Hurricane Mitch. According to the World Food Program (WFP), these hurricanes affected highly vulnerable Indigenous communities, where poverty rates reach 40 percent. The hurricanes adversely affected nearly three million people in this country of just 6.6 million. Populations located in the North Caribbean Autonomous Region were particularly hit hard by Hurricane Mitch and hit almost yearly by subsequent tropical storms and cyclones. This year in November, Tropical Storm Sara killed two individuals, flooded approximately 1,800 homes and six schools, and impacted 5,000 people in Nicaragua.

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2. Is the foreign state unable, temporarily, to handle adequately the return to the state nationals of the state?

(U) Yes, Nicaragua remains unable to adequately handle the return of its nationals. Nicaragua has not fully recovered from Hurricane Mitch, experienced additional environmental devastation since then including the impacts of Hurricane Julia as recently as October 2022, and poverty remains high, especially in areas that bore the brunt of the storm. Nicaragua is prone to numerous environmental shocks, including droughts, floods, and landslides. The country regularly experiences tropical storms or cyclones during the Atlantic hurricane season, which results in flooding, landslides, destruction of crops and infrastructure, and disruption of livelihoods. Additionally, Nicaragua's western coastline – located along Central America's Dry Corridor – is susceptible to periodic drought, followed by heavy, irregular rainfall, which can trigger flooding and landslides. These recurrent natural disasters continue to exacerbate food insecurity among rural and urban communities in Nicaragua, which the government has been unable to address effectively. Over the last decade, food insecurity increased from 30 to 38 percent, according to WFP data. The government also shut down via public announcement in its state-run periodical, *The Gaceta*, more than 5,500 NGOs since 2018, including 2,650 since November 2022, reducing the number of organizations that would have assisted with disaster response and recovery efforts or could have helped the government handle the return of Nicaraguan TPS beneficiaries. Conditions in the country remain extremely challenging, and those conditions temporarily prevent Nicaragua from being able to adequately accept the return of TPS recipients.

(SBU) Weak and poorly constructed infrastructure in the affected areas continues to pose a significant barrier to wide-scale recovery. Many roads are unpaved and become impassable in heavy rains

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and floods. Authorities have not properly rehabilitated most rural roads in the northern mountainous regions and the Caribbean coast since Hurricane Mitch and suffered additional damage from frequent flooding. Roads are usually repaired superficially during the dry season but become impassable during the rainy season, particularly in the isolated Caribbean coast region. The World Bank considers Nicaragua's infrastructure as the lowest quality infrastructure in Central America. According to the State Department's 2023 Human Rights Report, "poor roads hindered access to healthcare for many" on the Caribbean Coast. The Government of Nicaragua has not invested sufficiently in public works and other programs necessary for long-term socioeconomic development, which has impeded recovery and its ability to adequately handle the return of its nationals.

(SBU) Nicaragua is the second poorest country in the Western Hemisphere behind Haiti; GDP per capita in 2023 was just \$2,620. The cost of living far exceeds the average wages. Inflation reached a high of 12 percent November 2022, according to official figures. The price of a basket of typical consumer goods and services – a key measure of inflation's impact on the general population – was near a record high of \$560 per month as of August 2024, more than double the average minimum wage of \$230 per month. According to the Central Bank, purchasing power decreased 20 percent since 2018. Thousands of families rely on remittances to survive. Though official unemployment is low, about 40 percent of the population is underemployed. As of October 2024, the WFP reported that more than 1.4 million people face undernourishment. According to Transparency International's 2023 Corruption Perceptions Index, Nicaragua is ranked 172 out of 180 countries, a drop from its ranking of 167 of 180 countries in 2022. These significant economic challenges make it unlikely that the Nicaraguan government would be able to offer effective social

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services and support to thousands of returnees who would likely overwhelm the labor market and further increase unemployment.

3. Does the foreign state continue to support the TPS designation for its nationals in the United States?

(U) Yes.

C. Extraordinary and Temporary Conditions

1. Has the foreign state experienced extraordinary and temporary conditions that prevent nationals of the state from returning to the state in safety?

(U) Yes. President Ortega and Vice President Murillo have dramatically increased politically motivated efforts to deprive citizens of nationality, as well as efforts to de facto de-nationalize citizens and render said individuals stateless, and to force their citizens to leave the country. The State Department's Human Rights Report (HRR) chapters on Nicaragua in 2022 and 2023 document other significant human rights issues making it unsafe for nationals to return to Nicaragua. According to the HRRs, there are credible reports that regime authorities engaged in unlawful or arbitrary killings, including extrajudicial killings; forced disappearances; torture and other cruel, inhuman, or degrading treatment or punishment by prison guards and abuses by parapolice; maintenance of harsh and life-threatening prison conditions; and arbitrary arrest and detentions. The scope of this repression, together with the total capture of civil society, elimination of any opposition inside the country prevents Nicaraguans from being able to return to Nicaragua in safety.

(SBU) These developments are layered on top of a violent subjugation of Nicaraguan society since 2018. Civil unrest erupted

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in April 2018 when police and parapolice violently suppressed peaceful protests. The violence left 355 people dead, more than 2,000 injured, and forced thousands into hiding or to flee the country. In November 2021, President Ortega manipulated presidential elections to award himself a fourth consecutive term, alongside his wife as Vice President. In the process, Ortega and Murillo barred participation of all genuine opposition political parties, jailed opposition figures and presidential candidates, and blocked legitimate international observation efforts. In November 2022, Ortega-Murillo's Sandinista party gave itself control of all 153 municipalities in sham local elections, solidifying domination of the country by Ortega and Murillo as a single-party authoritarian state. In November of 2024, Ortega and Murillo directed the National Assembly to change Nicaragua's constitution to extend presidential term limits from five to six years and to elevate Vice President Murillo's post to "co-president," further concentrating power in their hands. According to exiled Nicaraguan NGO, Nicaragua Nunca Más, more than 800,000 Nicaraguans have fled for neighboring countries since 2018 due to the political crisis and state violence. The same report indicates that 200,000 of these Nicaraguans fled the country between June 2023 and October 2024.

(U) Regime authorities continue to engage in human rights abuses. A 2024 UN Group of Human Rights Experts on Nicaragua (GHREN) report on violations of freedom of religion or belief documents prison authorities' participation in acts amounting to torture and inhumane treatment of prisoners of conscience for the purpose of obtaining information, punishing, intimidating or coercing victims based on the perception that victims opposed the government. In one illustrative example in the report, a formerly imprisoned priest described prison authorities pulling his nails from his fingers and inserting needles into his hands. The 2022 and 2023 HRRs also document credible reports of punishment of family members –

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including arbitrary arrests and unsubstantiated charges – for offenses allegedly committed by their relatives; serious restrictions on free expression and media; substantial interference with the rights of peaceful assembly and freedom of association; serious government restrictions on and harassment of domestic and international human rights organizations; lack of investigation of and accountability for gender-based violence, including femicides; trafficking in persons; crimes involving violence or threats of violence targeting members of ethnic minorities and Indigenous communities; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons; and the worst forms of child labor. Anyone returned to Nicaragua and who is perceived to oppose the government, regardless of political or apolitical affiliation, likely would face a combination of these human rights issues on the ground.

(U) Since November 2022, and according to political prisoner watchdog organization Mecanismo, Nicaraguan authorities unjustly detained at least 248 individuals perceived to threaten the Ortega-Murillo regime's grip on power, in addition to those it had previously unjustly detained in the previous 18 months. While the Ortega-Murillo regime maintains a revolving door of unjustly detained political prisoners, it has shifted from unjustly detaining peaceful protestors and members of the political opposition to unjustly arresting ordinary citizens, Catholic clergy and lay people, evangelical leaders, lower profile journalists, and workers of charitable organizations. In April 2023, police arrested more than 55 individuals—ordinary Catholic parishioners, a journalist, and community figures—for their participation in peaceful religious processions and activities related to Holy Week (Easter) celebrations. In mid-November 2024, Mecanismo reported that the Ortega-Murillo regime unjustly held at least 46 individuals, even after four political prisoner releases since February 2023. Ortega and Murillo conditioned releases on the prisoners'

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agreement to accept forced relocation to another country in exchange for freedom, resulting in a total of 385 individuals sent to the United States, the Holy See, and Guatemala.

(U) The Ortega-Murillo regime established a practice of moving to strip Nicaraguans of their citizenship and subsequently seizing their assets as property of the state. In February 2023, the Ortega-Murillo regime released 222 political prisoners to the United States and moved to revoke the Nicaraguan nationality of each, including a prominent Nicaraguan Catholic bishop who remained unjustly detained. Days later, Ortega and Murillo moved to revoke the Nicaraguan nationality of an additional 94 perceived dissidents, some of whom remain in Nicaragua but many of whom already had fled the country. Nicaraguan authorities repeated this effort at mass revocation of citizenship in September 2024, when they released 135 political prisoners (almost all of whom authorities arrested after the February 2023 release of political prisoners) to Guatemala and subsequently moved to revoke their citizenship. Beyond erasing the names of these 452 individuals in the civil registries, the Ortega-Murillo regime began to seize assets and reappropriate properties of these individuals as assets of the state.

(U) In addition to formally moving to stripping citizens of nationality, the Ortega-Murillo regime also began to exercise a policy of large-scale de facto denationalization. According to GHREN, Nicaraguan authorities denied citizen services to Nicaraguans in Nicaragua, as well as overseas, who were seeking to obtain birth certificates, passports, passport renewals, and other civil registry documents. Lack of access to birth certificates and other civil registry documents puts many Nicaraguans, particularly children, at higher risk of exploitation and abuse. Without documents to prove their age, nationality, marital status, or other identifying statuses, Nicaraguans face dangers of losing

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access to or facing discriminatory treatment in public health care services and education. Girls without birth certificates in Nicaragua lack protections from child marriage, where 10 percent of girls marry before age 15, despite the minimum legal age of marriage being 18 (16 with parental permission).

(U) Throughout the last 18 months, the Ortega-Murillo regime's authorities increased efforts to force perceived dissidents to leave the country. According to Martha Patricia Molina, author of "Nicaragua: A Persecuted Church" and recipient of the State Department's award for International Religious Freedom, Ortega and Murillo expelled or barred re-entry of or forced to leave more than 259 religious actors, spanning Catholic clergy, nuns, and Catholic lay workers since 2022, most of them Nicaraguan citizens. Nicaraguan authorities also expelled several Evangelical pastors, also Nicaraguan citizens. The Ortega-Murillo regime's decimation of the civic spaces has prompted additional waves of departures of individuals, likely due to the risk of unjust arrest, enforced disappearance, or violence. In the past two years, Nicaraguan authorities forced the closure of more than 2,650 NGOs, private sector business chambers, religiously affiliated organizations and institutions, and private universities, adding to the more than 3,000 NGOs shuttered between 2018 and November 2022. The Ortega-Murillo regime also increased restrictions on press freedom. Throughout the last 18 months, Nicaraguan authorities and affiliates retaliated against the members of independent press, radio, and television stations by blocking transmissions, impeding the import of ink and paper, committing violence against journalists and unjustly detaining them, and shutting down media organizations and seizing their property. Since 2021, almost all independent news and media outlets have relocated to outside of the country, leaving Nicaragua devoid of non-state print news and triggering an exodus of independent journalists from Nicaragua.

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(U) Beginning in 2022, the Ortega-Murillo regime dramatically increased its repression of freedom of religion or belief, beginning with a wave of unjust detentions of Catholic clergy and a national ban on religious processions. The State Department's International Religious Freedom Reports for 2022 and 2023 document a significant uptick in reported anti-church activities, including unjust detentions and sentencing of clergy and laypeople; reported cruel; degrading and inhumane treatment of Catholic clergy while unjustly detained; forced expulsion and denied re-entry into the country for religious actors; state-sponsored abductions; burglary of Catholic religious items and lay property; unlawful entry into, desecration (including an alleged 2020 arson of Managua's cathedral), seizure and reappropriation; of Catholic churches and buildings; death threats; verbal insults; and surveillance and intimidation of parishioners during and after attendance of religious services.

(U) Since 2022, Ortega and Murillo enacted and amended a wide range of legislation to increase total control, codify their repressive practices, and target opponents, making Nicaragua an increasingly unsafe destination for returning nationals. The National Assembly approved new terrorism, anti-money laundering, telecom, non-profit organization, and foreign agent laws to criminalize independent activities and increase information control, surveillance, and censorship. The National Assembly continues to pass legislation that enables the judiciary and other government actors to abuse the justice system to prosecute civil society actors and ordinary citizens perceived to engage in dissent as so-called terrorists, assassins, and "coup mongers" in the words of the regime. As of September 2024, civil society organizations may only operate legally if they form partnerships with the Ministry of Interior, negating any independence from the state. The World Justice Forum 2024 Rule of Law Index ranked Nicaragua 137 out of 142 countries for adherence to the rule of law.

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(SBU) On November 28, the Nicaraguan National Assembly approved a repressive migration reform that amends the Penal Code to impose prison sentences of two to six years on Nicaraguans who enter or leave the country irregularly with the intent to harm national integrity, independence, sovereignty, or self-determination. Additionally, the reform legalizes the revocation of acquired nationality for those convicted of treason and allows for the expulsion of non-residents and residents involved in activities against the recently reformed Nicaraguan Constitution.

2. Would permitting nationals of the foreign state to remain temporarily in the United States be contrary to the national interest of the United States?

(U) No.

II. (SBU) Discretionary Factors

(SBU) What, if any, additional information relevant to this decision should be brought to the attention of the Department of Homeland Security?

(SBU) The Ortega-Murillo regime's repression of Nicaraguans increased dramatically. The Ortega-Murillo regime engages in and tolerates particularly severe violations of religious freedom for which the Secretary of State designated Nicaragua as a Country of Particular Concern (CPC) in November 2022 and re-designated as a CPC on December 29, 2023, after designating Nicaragua a Special Watch List country for three consecutive years since 2019. On November 27, 2018, pursuant to the International Emergency Economic Powers Act, the President declared a national emergency with respect to the situation in Nicaragua. According to the

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declaration, “[t]he violent response by the Government of Nicaragua to the protests that began on April 18, 2018, and the Ortega-Murillo regime’s continued systematic dismantling and undermining of democratic institutions [and] its use of violence and repressive tactics against civilians” were contributing factors to justify declaration of an “unusual and extraordinary threat to national security and foreign policy of the United States.” On November 22, President Biden continued for one year the national emergency declared in E.O. 13851 with respect to the situation in Nicaragua.

Nicaraguan authorities systematically barred re-entry into the country to Nicaraguan citizens. According to the GHREN, authorities prevented some 110 Nicaraguans from re-entering the country in 2023, representing a 500 percent increase in the practice since 2022. The GHREN reported at least 12 Nicaraguans barred from re-entry between January and March 2024. In all cases, victims included “journalists, priests, academics, lawyers, human rights defenders, and family members of released former political prisoners.” The GHREN further clarifies that “many of the individuals whom authorities prohibited from returning to Nicaragua were previous victims of harassment, threats against them or their families, and other human rights violations.” Even if authorities permitted their return, they fit the profiles of individuals that continue to face risks of unjust detention, enforced disappearance, harassment, and other abuses of human rights in Nicaragua and would remain subject to such risks.

III. (SBU) Recommendation

(SBU) For the reasons described herein, the Department recommends an extension of Nicaragua’s TPS designation for 18 months based on environmental disaster and redesignation of TPS for Nicaragua based on extraordinary and temporary conditions.

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